THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 16104 of 2000

Oral order:

Heard the learned Standing Counsel for the petitioner-APSRTC and the learned counsel for respondent Nos. 1 to 3.

The petitioner, namely Depot Manager, APSRTC, Dharmavaram, aggrieved by the award dated 16.02.2000 passed by the Labour Court, Anantapur, allowing I.D. No. 136 of 1996, and directing payment of backwages, attendant benefits, pension, gratuity, encashment of leave, as admissible to the legal heirs of the Driver, from the date of his suspension till the date of his death, filed the present writ petition.

The only ground urged by the learned Standing Counsel for the petitioner in support of the writ petition is that inasmuch as the deceased-Driver has raised industrial dispute, five years after his removal from service, the Labour Court committed an error in awarding backwages for the period from the date he was removed from service till the date of his death during the pendency of I.D., to his legal heirs.

On the other hand, the learned counsel for respondent Nos. 1 to 3 submitted that the deceased-Driver was absent only for three days, and for sanction of leave for the said period, he had even sent a telegram, and for such short period of absence, the punishment of removal from service, imposed on him by the disciplinary authority, is harsh and the Labour Court had rightly set aside the same.

Having heard the learned Standing Counsel for the petitioner as well as the learned counsel for respondent Nos. 1 to 3, I have perused the impugned award.

It was the case of the deceased-Driver that he had sent telegram seeking extension of leave. The petitioner did not dispute this fact. Though the petitioner contends that the deceased-Driver for his absence, had taken contrary stands, the fact remains the Enquiry Officer, has failed to enquire whether the absence of the deceased-Driver was voluntary or willful or because of his illness or because his

sister fell ill. There is no material produced by the petitioner to show that the deceased-Driver had absented wantonly in order to cause inconvenience. In such circumstances, no exception can be taken to the finding of the Labour Court that the petitioner's absence was not willful, and more so when the Enquiry Officer, failed to enquire on that aspect.

The deceased-Driver was removed from service on 26.07.1990. He raised industrial dispute in the year 1996. There is no limitation provided under the Industrial Disputes Act, 1947 for raising an industrial dispute by the workman. The petitioner also has not raised the ground of limitation before the Labour Court. Be that as it may, having regard to the facts and circumstances of the case, that the Driver was removed from service in 1990, he filed I.D. five years after his removal, and that he died during the pendency of the I.D., both the counsel for the petitioner as well as respondent Nos. 1 to 3 agreed that the writ petition be disposed of by modifying the award to the extent of granting 50% backwages.

In view of the agreed stand taken by both the counsel, the writ petition is disposed of modifying the award of the Labour Court to that of granting 50% backwages. The award of the Labour Court in all other respects stands undisturbed. No costs.

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N.V. RAMANA, J.

Date: 02.01.2006

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